

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant: Michael J. Chambers, *et al.*
Serial No.: 10/695,603
Filed: October 28, 2003
Title: SYSTEM AND METHOD EMPLOYING A MOBILE TELEPHONE TO
RETRIEVE INFORMATION REGARDING N ARTICLE
Grp./A.U.: 2617
Examiner: Jaime M. Holliday Confirmation No.: 6324

Commissioner for Patents
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Sir:

APPELLANTS' REPLY BRIEF UNDER 37 C.F.R. §41.41

In response to the Examiner's Answer mailed June 29, 2007, the Appellants submit this
Reply Brief in compliance with 37 C.F.R. §41.41.

I. Reply to Examiner's Arguments

In response to the Appellants arguments, the Examiner asserts that Simon would not frustrate the invention of Ogasawara if combined therewith. The Appellants disagree as noted below.

Ogasawara relates to an electronic shopping system including a server and at least one wireless videophone for communicating with the server. According to one preferred embodiment of Ogasawara, once a customer visits a store, the customer simply dials the number of the store's personal shopping system service. The personal shopping system application is then automatically downloaded into the customer's videophone. The downloaded program automatically begins execution and provides the desired functionality of a personal shopping system. (*See Ogasawara, column 3, lines 4-13.*)

In a personal shopping system, Ogasawara discloses a:

purchaser carries a scanner embedded hand-held terminal within a store. Bar codes of products to be purchased are scanned with the hand-held scanner. A display on the scanner embedded hand-held terminal displays an item price and a running total of the purchase prices of the products which have been scanned. Payment for the scanned products is accomplished at a checkout counter in a conventional manner. (*See Ogasawara, column 2, lines 7-14.*)

Ogasawara therefore purports to allow retailers to implement a personal shopping system while minimizing the cost investment necessary to do so by employing purchaser's telephones instead of dedicated hand-held terminals. More particularly, Ogasawara asserts:

a store maintains a server which provides a downloadable purchase transaction program to a purchaser's wireless videophone when the purchaser calls the store's server via the purchaser's wireless videophone. After downloading the purchase transaction program from the server to the wireless videophone, the server communicates with the wireless videophone so as to use the downloaded purchase transaction program to facilitate selection of the desired product(s) for purchase, as well as to facilitate payment therefore. (*See Ogasawara, column 3, lines 21-31.*)

Further, Ogasawara notes that it "is desirable to download the purchase transaction program into a wireless videophone as needed, rather than to permanently store the purchase transaction program in the wireless videophone, because downloading allows a plurality of different sellers to utilize their own programs, rather than requiring a single, universal program for all sellers." (*See* Ogasawara, column 3, lines 32-36.) This allows different sellers "to incorporate different messages, advertisements, menus, etc. into their own purchase transaction program and to further customize their own purchase transaction program so as to tailor it to the particular products being sold." (*See* Ogasawara, column 3, lines 32-36.)

Simon addresses a purported need in the art of a portable device that allows a customer to obtain product-related information from multiple databases from any location. (*See* Simon, column 1, lines 38-41.) As such, Simon provides a personal communication device that allows a user to communicate over the Internet with a network of multiple remote databases and to search the databases for desired product-related information from any location. (*See* Simon, column 1, lines 48-52.) Simon further discloses:

The communication device establishes a communication link with a communications server, and the product information is transmitted to the server, which interfaces with one or more product information libraries to determine a product identifier based on the input product information. The product identifier is used by the server to search various databases over the Internet for desired product-related information in response to a search query from the user. For example, the user may desire to search for product reviews such as consumer reports reviews, or the user may desire to obtain competitive pricing information from multiple merchant databases/websites for the particular product or for closely related products. Other product related information includes the locations of merchants selling the product or related products, related advertising, recall information, popularity of the product and/or company, nutritional information and recipes for food products and personal-related information, such as how many times the user purchased the product in the past. (*See* Simon, column 1, line 56, to column 2, line 7.)

Thus, Ogasawara discloses a system that downloads a program to a mobile telephone when the mobile telephone contacts the server. The downloaded program is for a particular store location and for selling products of the store at that particular location. It is directed to allowing a seller to reduce the installation cost needed to implement a personal shopping system at the store.

Simon, on the other hand, is not directed to facilitating the purchasing of products from a particular store but instead is directed to assisting a potential purchaser in obtaining product information from multiple product sources. In Simon, instead of downloading a program to a mobile telephone for interacting with a particular server for one seller, Simon enables a mobile telephone to interact with multiple databases of multiple vendors, libraries, *etc.*

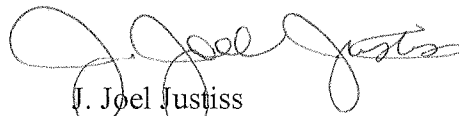
Therefore, Simon and Ogasawara address two different problems and are not compatible. On the contrary, enabling a mobile telephone to search multiple databases for information as in Simon completely contradicts enabling a mobile telephone for purchasing products at a single store. As noted in *In re Grasselli*, it is improper to combine references where the references teach away from their combination. (See MPEP 2145 X(D)(2) referring to *In re Grasselli* 713 F.2d 731, 743, 218 USPQ 769, 779 (Fed. Cir. 1983).) Since the purported invention of Simon teaches away from and would clearly frustrate the purported invention of Ogasawara, the combination of Simon with Ogasawara is improper. Accordingly, not even addressing the other arguments of the Appeal Brief, the Examiner has not provide a *prima facie* case of obviousness of independent Claims 1, 11 and 21 and Claims dependent thereon. As such, the Appellants respectfully request the Board of Patent Appeals and Interferences reverse the Examiner's Final rejection of these Claims.

II. Conclusion

For at least the reasons set forth above, Claims 1-21 are patentably nonobvious over the cited combinations. Accordingly, the Appellants respectfully request that the Board of Patent Appeals and Interferences reverse the Examiner's Final Rejection of all of the Appellants' pending claims.

Respectfully submitted,

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